DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BUNKLEY et al. *v.* COMMONWEALTH.

June 16, 1921.

[108 S. E. 1.]

1. Equity (§ 377*)—Courts Should Order Jury Issue of Own Motion in Difficult Case.—In cases of exceptional difficulty and conflict in the testimony, it is error for the court to fail to order an issue out of chancery on its own motion, and when an issue is properly ordered, the chancellor should abide by the verdict, unless good cause appears to the contrary.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 52.]

2. Equity (§ 377*)—Propriety of Ordering Issue Out of Chancery Is Determined by Sound Exercise of Discretion.—The propriety of ordering issue out of chancery for jury trial is determined by the application of sound legal discretion to the circumstances, and a mistake in the exercise of such discretion is reviewable by appeal; Code 1904, § 3381, not being intended to make the directing of an issue a matter of right and not of discretion.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 52.]

3. Equity (§ 379*)—Petition and Affidavit Held Not to Require Ordering of Issue.—A petition for an issue out of chancery for a jury trial, which alleged that petitioners would introduce a large number of witnesses who would contradict the witnesses of the complainant, and that there would result a great conflict in the testimony, so that it was proper the court should direct an issue, merely states the opinion of the petitioners, and does not require the ordering of the issue.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 64, 65.]

4. Nuisance (§ 84*)—Evidence Held to Show House Was Disorderly.—In a suit to have a boarding house declared a nuisance, and abate, evidence by the commonwealth's witnesses, showing that the house was of ill fame, and used for prostitution, which was contradicted only by evidence for the defense that witnesses, who were present on other occasions, did not see any improper acts, held sufficient to sustain the chancellor's finding that the house was of ill fame.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 525.]

5. Appeal and Error (§ 1008 (1)*)—Conclusions of Trial Court on

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Oral Testimony Entitled to Substantially Same Credit as Verdict.—The conclusions of the trial court on oral testimony are substantially entitled to the same credit as the verdict of a jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577.]

6. Nuisance (§ 84*)—Conflict in Evidence Held Not to Require Special Issue as to Character of House.—In a suit to abate a disorderly house, evidence on behalf of defendant that witnesses had not seen any disorderly acts when they were present, and that they would not have remained in the house if they had thought it was used for prostitution, though in the sense conflicting with evidence for the commonwealth showing the house was used for prostitution does not raise such a conflict as to require the court of its own motion to order an issue out of chancery for trial by jury.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 52.]

7. Statutes (§ 117 (1)*)—Omission of Forfeitures Provision from Title of Abatement Statute Does Not Invalidate Act.—Abatement Act 1916, the title to which was "An act to abate and enjoin disorderly houses to declare the same to be nuisances," is not in violation of Constitution, § 52, requiring the object of law to be expressed in its title, because the title does not include the forfeiture provisions contained in body of the act.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 750, 751.]

8. Statutes (§ 105 (1)*)—Constitutional Provision as to Title Liberally Construed and Act Upheld if Practicable.—The constitutional provision relating to the title of an act is to be liberally construed, and the act upheld if practicable.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 751.]

9. Eminent Domain (§ 2 (1)*)—Provision against Taking or Damaging Private Property Does Not Apply to Forfeiture for Unlawful Use.—Const. § 58, prohibiting the taking or damaging of private property for public use without just compensation, does not prohibit a forfeiture of property imposed upon an owner, who has been convicted of using the property for unlawful and immoral purposes.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 228.]

10. Constitutional Law (§ 303*)—The Abatement Statute Does Not Deny Due Process of Law.—The statute authorizing abatement of disorderly houses as nuisances, and providing for forfeiture thereof, does not deprive the owner of due process of law, since he must be impleaded on the specific charge and afforded an opportunity to make his defense before the forfeiture can be enforced.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 228.]

11. Nuisance (§ 60*)—Statutory Abatement of Disorderly Houses within Police Power.—The enactment of Abatement Act of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1916, providing for the abatement of disorderly houses as nuisances, was within the police power of the state.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 225.]

Appeal from Corporation Court of City of Newport News.

Suit by the Commonwealth against Blanche R. Bunkley and another to have the premises maintained by defendants declared a nuisance and enjoined and abated. Decree for complainant, and defendants appeal. Affirmed.

Jno. N. Sebrell, Jr., of Norfolk, and *J. Winston Read,* of Newport News, for appellants.

The Attorney General, for the Commonwealth.

JUDY et al. *v.* DOYLE.

June 16, 1921.

[108 S. E. 6.]

1. Customs and Usages (§ 10*)—Testimony as to Custom of Transporting Mower Blades Inadmissible on Issue of Negligence in Parking Truck with Protruding Blades.—In an action for injuries to a bicycle rider, who ran into the sharp edges of mowing machine blades projecting from defendant's truck, in riding between truck and automobile parked next to truck along side of street, in which it was claimed that defendant was negligent in parking truck with open blades protruding toward other automobile parked in close proximity, but in which there was no isssue as to whether the placing of the blades in the truck so as to protrude therefrom was in itself negligence, testimony that it was the custom of careful and prudent farmers in the community to transport mower blades to their farms in such manner held inadmissible; such testimony having no bearing on question of whether parking of truck in such manner was negligence.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 416.]

2. Municipal Corporations (§ 705 (6)*)—Driver, Who Parked Truck with Sharp Mower Blades Protruding Toward Automobile Parked in Close Proximity, Held Negligent.—Driver of truck with sharp edges of mower blades projecting therefrom, who parked truck so that the blades extended toward car parked next to truck, leaving a very narrow passage between truck and such car, so as to endanger persons passing between the truck and such automobile, and who left track unattended, without wrapping burlap or other material around the protruding blades, or inclosing them between boards, held negligent.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 360, 361.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.